

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-119283-01

Date:

August 1, 2001

Legend

Company =

Date 1 =

State =

Dear

This letter responds to a letter dated March 15, 2001, requesting a ruling under § 301.9100-3 of the Procedure and Administration Regulations that Company be granted an extension of time to elect to be treated as an association under § 301.7701-3(c) effective Date 1.

FACTS

According to the information submitted, on Date 1, a predecessor S corporation converted to Company, a State limited partnership. Although Company intended to be taxed as a corporation for federal tax purposes as of Date 1, it failed to timely elect corporate status.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an "eligible entity") can elect its classification for federal tax purposes. A "business entity" is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. Section 301.7701-2(a). An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(b)(1)(i) provides that unless a domestic eligible entity elects otherwise, the entity is a partnership if it has two or more members.

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To elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832, Entity Classification Election, with the designated service center. Section 301.7701-3(c)(1)(i). An election will be effective on the date specified on the Form 8832 or on the date filed if no such date is specified. The effective date specified on the Form 8832 cannot be more than 75 days prior to the date the election is filed. Section 301.7701-3(c)(1)(iii).

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, Company is granted an extension of time to elect to be taxed as an association as of Date 1. Company has until 60 days from the date of this letter to file a Form 8832 with the applicable service center to elect to be treated as an association for federal tax purposes as of Date 1. A copy of this letter should be attached with the election and is included for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item other than those explicitly set forth in this letter. Specifically, no opinion is expressed or implied concerning whether Company can be a subchapter S corporation.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Company.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes